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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/619,837

**Applicant(s)**

PINCHASIK ET AL.

**Examiner**

Vy Q. Bui

**Art Unit**

3773

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 95-103, 125-149, 184-188 and 195 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 95-103, 125-149, 184-188 and 195 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/8/2008.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

The amendment filed 6/26/2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. It is not clear if the limitation in claims 139, 146, 149, 154 if these limitations are supported by the original disclosure. Indication of the support for these limitations in the specification is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 95-103, 125-138, 140-145, 147-148 and 184-188 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al-7,204,848.

As to claims 95-103, 125-138, 140-145, 147-148 and 184-188, Brown-'848's Fig. 2 and Fig. 3 show a stent of stainless steel or Nitinol (C. 12, ll. 25-37 and enlarged one cell below) including triangular cells having wider and stronger members of lower frequency F1 (1<sup>st</sup> member ABC, 2<sup>nd</sup> member CDE, 3<sup>rd</sup> member EFG, 4<sup>th</sup> member GHI) than members of higher frequency F2 (5<sup>th</sup> member ARQP, 6<sup>th</sup> member PO, 7<sup>th</sup> member ON, 8<sup>th</sup> member NM, 9<sup>th</sup> member ML and

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10<sup>th</sup> member LKJI) and 1<sup>st</sup> to 10<sup>th</sup> members formed 1<sup>st</sup> loop L1, 2<sup>nd</sup> loop L2, 3<sup>rd</sup> loop L3, 4<sup>th</sup> loop L4 and 5<sup>th</sup> loop L5 substantially as recited in the claims.

Notice that:

As to claim 103, Brown-'848 stent is capable of being expanded to have the limitation of the claim.

As to claim 126, in a crimping configuration, all members of the stent are substantially have the same orientation.

As to claims 128-129, 1<sup>st</sup> member ABC is about twice 6<sup>th</sup> member PO.

As to claim 130, 2<sup>nd</sup> member CDE is about the length of 5<sup>th</sup> member ARQP.

As to claim 131-132, Brown-'848's Fig. 2 shows 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> members wider than 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> members.

As to claim 133, 1<sup>st</sup> member ABC is wider than 5<sup>th</sup> member ARQP.

As to claim 134, longest 2<sup>nd</sup> member CDE (joined 3<sup>rd</sup> member EFG) extends from E to S in the adjacent cell.

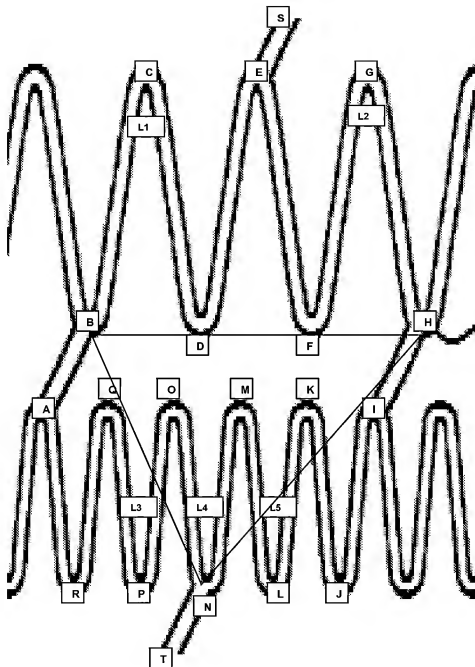
As to claim 135, all members have substantially straight portion(s).

As to claim 135, all members inherently must have different flexibilities at least because of manufacturing tolerance.

As to claims 141 and 143, portion AB of 1<sup>st</sup> member ABC is more rigid than portion OP of 6<sup>th</sup> member OP.

As to claims 144-145, 147-148, Brown-'848's Fig. 2 shows wider 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> members in comparison to 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> members. Therefore, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> members inherently must have greater radial compression than that of 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> members.

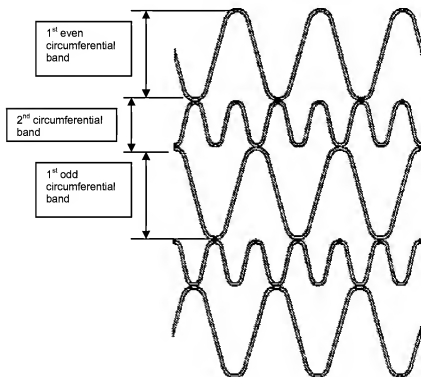
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2. Claim 195 is rejected under 35 U.S.C. 102(e) as being anticipated by Jayaraman-6,162,245.

As to claim 195, Jayaraman-'245's Fig. 28 and Fig. 30 (see below) show a stent including 1<sup>st</sup> circumferential bands of lower frequency F1 and circumferential bands of higher frequency F2 substantially as recited in the claims.



*Fig. 30*

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 129-132, 138-149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al-7,204,848 in view of Richter-5,807,404.

As to claims 129-132, 138-149, even if Brown et al-7,204,848 does not explicitly disclose members of a triangular cell having different width. However, providing thinner members or longer members in a cell for enhancing flexibility of a stent, and wider members or shorter members in a cell for stronger radial resistance of a stent is well known in the art. For example, Richter-5,807,404 (Fig. 1, for example) discloses elements 8', 9' having width W1 thinner than those of elements 8, 9 of width W2. In view of Richter-5,807,404, it would have been obvious to one of ordinary skill in the art to provide thinner or longer members for more flexibility, and wider or shorter members in a cell of Brown-'848 stent to control flexibility and radial strength of a stent as one desires.

***Response to Arguments***

Applicant's arguments with respect to all rejected claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/s/ Vy Q. Bui/  
Primary Examiner, Art Unit 3773